



**STATE OF MARYLAND**

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
(DHCD)**

**INVITATION FOR BIDS (IFB)**

**ENERGY KIT SUPPLIER**

**IFB NUMBER: S00R2600021**

**ISSUE DATE: DECEMBER 10, 2021**

**NOTICE TO BIDDERS**

**SMALL BUSINESS RESERVE PROCUREMENT**

This is a Small Business Reserve Procurement for which award will be limited to certified small business vendors. Only businesses that meet the statutory requirements set forth in State Finance and Procurement Article, §§14-501 —14-505, Annotated Code of Maryland, and that are certified by the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) Small Business Reserve Program are eligible for award of a contract.

**NOTICE**

A Prospective Bidder that has received this document from a source other than eMarylandMarketplace (eMMA) <https://procurement.maryland.gov> should register on eMMA. See **Section 4.2**.

**MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO RESPOND  
TO THIS SOLICITATION.**

**NO BID NOTICE/VENDOR FEEDBACK FORM**

To help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, please provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this solicitation, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Summary Sheet below for contact information).

**Title: Energy Kit Supplier**  
**Solicitation No: S00R2600021**

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:
  - Other commitments preclude our participation at this time
  - The subject of the solicitation is not something we ordinarily provide
  - We are inexperienced in the work/commodities required
  - Specifications are unclear, too restrictive, etc. (Explain in REMARKS section)
  - The scope of work is beyond our present capacity
  - Doing business with the State is simply too complicated. (Explain in REMARKS section)
  - We cannot be competitive. (Explain in REMARKS section)
  - Time allotted for completion of the Bid is insufficient
  - Start-up time is insufficient
  - Bonding/Insurance requirements are restrictive (Explain in REMARKS section)
  - Bid requirements (other than specifications) are unreasonable or too risky (Explain in REMARKS section)
  - MBE or VSBE requirements (Explain in REMARKS section)
  - Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section)
  - Payment schedule too slow
  - Other: \_\_\_\_\_

2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

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Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**STATE OF MARYLAND**  
**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**  
**(DHCD)**

**KEY INFORMATION SUMMARY SHEET**

<b>Invitation for Bids</b>	Energy Kit Supplier
<b>Solicitation Number:</b>	S00R2600021
<b>IFB Issue Date:</b>	December 10, 2021
<b>IFB Issuing Office:</b>	Department of Housing and Community Development (DHCD or the "Department")
<b>Procurement Officer:</b>  <b>e-mail:</b> <b>Office Phone:</b>	Joy Niles 7800 Harkins Road, Lanham, MD 20706 Joy.Niles@maryland.gov 301.429.7585
<b>Bids are to be sent to:</b>	Proposals will be accepted through the State's eMaryland Marketplace Advantage (eMMA) e-Procurement system. Instructions on how to submit proposals electronically can be found at: <a href="https://procurement.maryland.gov/wp-content/uploads/sites/12/2019/08/5-eMMA-QRG-Responding-to-Solicitations-Double-Envelope-v2.pdf">https://procurement.maryland.gov/wp-content/uploads/sites/12/2019/08/5-eMMA-QRG-Responding-to-Solicitations-Double-Envelope-v2.pdf</a>
<b>Pre-Bid Conference:</b>	<b>December 21, 2021, at 10:00 a.m. Local Time</b> Google Meet Virtual Teleconference, by invitation from Procurement Officer Only. See <b>Attachment A</b> for instructions.
<b>Questions Due Date and Time</b>	<b>December 28, 2021, at 2:00p.m. Local Time</b>
<b>Bid Due (Closing) Date and Time:</b>	<b>January 13, 2022, at 2:00pm Local Time</b> Bidders are reminded that a completed Feedback Form is requested if a no-bid decision is made (see <b>page iv</b> ).
<b>SBR Designation:</b>	Yes
<b>MBE Subcontracting Goal:</b>	None
<b>VSBE Subcontracting Goal:</b>	None
<b>Contract Type:</b>	Indefinite quantity with firm fixed unit prices.
<b>Contract Duration:</b>	Three (3) years with one (1) one-year option to be exercised at the Department's sole discretion.

<b>Primary Place of Performance:</b>	Vendor's place of work
<b>Federal Funding:</b>	No

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## 1 Minimum Qualifications

### 1.1 Bidder Minimum Qualifications

Minimum Bidder Experience:

- A. A Bidder must possess at least five (5) years of experience in warehousing, packaging, and shipping goods within the last seven (7) years.

As proof of meeting the following Minimum Qualifications, please complete **Attachment P**. Experience Affidavit and submit with technical proposal.

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## 2 Contractor Requirements: Scope of Work

### 2.1 Summary Statement

**2.1.1** The Department of Housing and Community Development (DHCD or the "Department") is issuing this Invitation for Bids ("IFB") in order to procure the services defined in this Section 2, as specified in this IFB, from a contract between the successful bidder and the Department. As part of its EmPOWER Maryland program suite for the 2021-2023 cycle, DHCD will offer a new energy kit program that is designed to engage clients early on in the process and provide energy savings to every household. In this program, DHCD will send an energy kit containing a small number of direct-install measures and printed resources with energy saving tips to each new applicant. It is the State's intention to obtain goods and services, as specified in this IFB, from a Contract between the selected Bidder and the State.

**2.1.2** The Department intends to make a single award for the work under this IFB. See **Section 4.9 Award Basis** for more Contract award information.

**2.1.3** A Bidder, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation. The successful Bidder (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

**2.1.4** Maryland State and local entities as defined in Finance and Procurement §13-110(a) and nonprofit entities within the State of Maryland may purchase from the Contractor goods or services covered by the Contract at the same prices chargeable to the State. All such purchases by non-executive branch entities, non-State governments, government agencies or nonprofit entities:

Shall constitute Contracts between the Contractor and that entity;

Shall not constitute purchases by the State or State agencies under the Contract;

Shall not be binding or enforceable against the State; and

May be subject to other terms and conditions agreed to by the Contractor and the purchaser.

**2.1.5** All Contract prices, terms, and conditions must be provided to any Maryland local government or nonprofit entity requesting services under the Contract. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State entity.

### 2.2 Background and Purpose

As part of its EmPOWER Maryland program suite for the 2021-2023 cycle, DHCD will offer a new energy kit program that is designed to engage clients early on in the process and provide energy savings to every household. In this program, DHCD will send an energy kit containing a small number of direct-install measures and printed resources with energy saving tips to each new applicant.

### 2.2.1 State Staff and Roles

### 2.2.2

DHCD will provide the following:

- a) DHCD will determine applicant eligibility for the program. A list of eligible clients will be sent to the Offeror between one (1) and four (4) times per month.
- b) The Offeror should expect to receive between 1,000 and 2,500 client referrals per month.

## 2.3 Responsibilities and Tasks

The Offeror must mail an energy kit to each client within 2 weeks of receiving the client's information. Each kit must be sent in a DHCD branded box. DHCD will provide the print templates for the box once sizing is confirmed with the successful Offeror. The size of the box shall be the smallest necessary to package the contents of the energy kit.

### 2.3.1 The Energy Kit

- a) **The Energy Kit shall contain the following materials:**

- Four (4) LED A-19 light bulbs, Energy Star-rated;
- One (1) LED night light with daylight sensor, no manual override;
- One (1) Showerhead, 1.75 GPM, with separate thermostatic valve

**OR** (at Contractor's discretion) Showerhead, 1.75 GPM, with thermostatic valve included;

- One (1) five-minute shower timer;
  - DOE Energy Saver Guide booklet by Westrock - English version (as of 8/23/21, booklets are 52 pages and are priced at \$1.05 each.) (<http://qq.westrock.com/energysavers/>). ([procured printed versions](#)); and
  - DHCD program information, to be printed from DHCD-provided digital file.
- b) The Offeror is responsible for printing DOE Energy Saver Guide booklet by Westrock - English version from the DOE Energy Saver website (see [link](#)) and placing booklet into each Energy Kit.
  - c) The Offeror is responsible for establishing a system to have the necessary materials available to ship the kits in the required timeframe
  - d) The Offeror must provide by the 5th of every month a report to DHCD with tracking information, where it can be determined by the date of delivery for each Energy Kit shipped from the previous month. Report must contain the following: name, address, shipping date, and tracking number.
  - e) The Offeror must keep a record reflecting shipment dates and addresses to which the kits were mailed and shall submit monthly invoices to DHCD no later than the 5th of the following month.

Invoices must be accompanied by a complete list of clients the energy kits were sent to and must contain information such as names, addresses, and shipping date, and may require tracking of delivery date in addition to any other information as may be required by DHCD.

### 3 Contractor Requirements: General

#### 3.1 Contract Initiation Requirements

THIS SECTION IS INAPPLICABLE TO THIS IFB.

#### 3.2 End of Contract Transition

THIS SECTION IS INAPPLICABLE TO THIS IFB.

#### 3.3 Invoicing

##### 3.3.1 General

- a) The Contractor shall send the original of each invoice and signed authorization to invoice to the Contract Monitor, Nicola Tran at e-mail address: [Nicola.Tran@maryland.gov](mailto:Nicola.Tran@maryland.gov).

All invoices for services shall be verified by the Contractor as accurate at the time of submission.

An invoice not satisfying the requirements of a Proper Invoice (as defined in COMAR 21.06.09) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:

- 1) Contractor name and address;
- 2) Remittance address;
- 3) Federal taxpayer identification (FEIN) number or social security number, as appropriate;
- 4) Invoice period (i.e. time period during which services covered by invoice were performed);
- 5) Invoice date;
- 6) Invoice number;
- 7) State assigned Contract number;
- 8) State assigned (Blanket) Purchase Order number(s);
- 9) Goods or services provided;
- 10) Amount due; and
- 11) Any additional documentation required by regulation or the Contract.

Invoices that contain both fixed price and time and material items shall clearly identify each item as either fixed price or time and material billing.

The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.

Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.

The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor, however, is not exempt from such sales and use taxes and may be liable for the same.

Invoices for final payment shall be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than sixty (60) calendar days from the Contract termination date.

### **3.3.2 Invoice Submission Schedule**

The Contractor shall submit invoices in accordance with the following schedule:

- a) For items of work for which there is one-time pricing (see **Attachment B – Bid Form**) those items shall be billed in the month following the acceptance of the work by the Department.

### **3.3.3 Deliverable Invoicing**

- a) Deliverable invoices shall be accompanied by notice(s) of acceptance issued by the State for all invoices submitted for payment. Payment of invoices will be withheld if a signed DPAF is not submitted (see online example at [http://doit.maryland.gov/contracts/Documents/\\_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf](http://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf)).

Payment for deliverables will only be made upon completion and acceptance of the deliverables as defined in **Section 2**.

### **3.3.4 Time and Materials Invoicing**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

### **3.3.5 For the purposes of the Contract an amount will not be deemed due and payable if:**

- a) The amount invoiced is inconsistent with the Contract;
- b) The proper invoice has not been received by the party or office specified in the Contract;
- c) The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
- d) The item or services have not been accepted;
- e) The quantity of items delivered is less than the quantity ordered;
- f) The items or services do not meet the quality requirements of the Contract;
- g) If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;
- h) If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or

- i) The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

### **3.3.6 Travel Reimbursement**

Travel will not be reimbursed under this IFB.

### **3.3.7 Retainage**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

## **3.4 Liquidated Damages**

### **3.4.1 MBE Liquidated Damages**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

### **3.4.2 Liquidated Damages other than MBE**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

## **3.5 Disaster Recovery and Data**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

## **3.6 Insurance Requirements**

The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised:

### **3.6.1** The following type(s) of insurance and minimum amount(s) of coverage are required:

- a) Commercial General Liability - of \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$3,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies.
- b) Errors and Omissions/Professional Liability - \$1,000,000 per combined single limit per claim and \$3,000,000 annual aggregate.

### **3.6.2** The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance and professional liability.

### **3.6.3** All insurance policies shall be endorsed to include a clause requiring the insurance carrier provide the Procurement Officer, by certified mail, not less than thirty (30) calendar days' advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) business days

of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least fifteen (15) calendar days prior to the expiration of the insurance policy then in effect.

**3.6.4** Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.

**3.6.5** The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this section within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Monitor.

**3.6.6** The Contractor shall require any subcontractors to obtain and maintain comparable levels of coverage and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

### **3.7 Security Requirements**

The following requirements are applicable to the Contract:

#### **3.7.1 Employee Identification**

- a) Contractor Personnel shall display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel shall provide additional photo identification.
- b) Contractor Personnel shall cooperate with State site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for State badge issuance.
- c) Contractor shall remove any Contractor Personnel from working on the Contract where the State determines, in its sole discretion, that Contractor Personnel has not adhered to the Security requirements specified herein.
- d) The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States citizens, prior to commencement of work under the Contract.

#### **3.7.2 Security Clearance / Criminal Background Check**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

#### **3.7.3 On-Site Security Requirement(s)**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

#### **3.7.4 Information Technology**

The Contractor shall:

- 1) Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security such as those listed below (see **Section 3.7.5**);

- 2) Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of the Contract; and
- 3) The Contractor, and Contractor Personnel, shall (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.

### **3.7.5 Data Protection and Controls**

- A. Contractor shall ensure a secure environment for all State data and any hardware and software (including but not limited to servers, network and data components) provided or used in connection with the performance of the Contract and shall apply or cause application of appropriate controls so as to maintain such a secure environment (“Security Best Practices”). Such Security Best Practices shall comply with an accepted industry standard, such as the NIST cybersecurity framework.

### **3.7.6 Security Logs and Reports Access**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

### **3.7.7 Security Plan**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

### **3.7.8 PCI Compliance**

## **3.8 Security Incident Response**

### **3.8.1 Security Incident Response**

- A. The Contractor shall notify the Department in accordance with **Section 3.7.9A-D** when any Contractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows:
  - 1) notify the Department within twenty-four (24) hours of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Monitor, Department chief information officer and Department chief information security officer;
  - 2) notify the Department within two (2) hours if there is a threat to Contractor’s solution as it pertains to the use, disclosure, and security of State data; and
  - 3) provide written notice to the Department within one (1) Business Day after Contractor’s discovery of unauthorized use or disclosure of State data and thereafter all information the State (or Department) requests concerning such unauthorized use or disclosure.
- B. Contractor’s notice shall identify:
  - 1) the nature of the unauthorized use or disclosure;



- 2) the State data used or disclosed,
  - 3) who made the unauthorized use or received the unauthorized disclosure;
  - 4) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
  - 5) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
  - 6) The Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- C. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract.
- D. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of State data or other event requiring notification, and, where notification is required, assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the State (or Department) and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.

### **3.8.2 Data Breach Responsibilities**

- A. If the Contractor reasonably believes or has actual knowledge of a Data Breach, the Contractor shall, unless otherwise directed:
- 1) Notify the appropriate State-identified contact within 24 hours by telephone in accordance with the agreed upon security plan or security procedures unless a shorter time is required by applicable law;
  - 2) Cooperate with the State to investigate and resolve the data breach;
  - 3) Promptly implement commercially reasonable remedial measures to remedy the Data Breach; and
  - 4) Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services.
- B. If a Data Breach is a direct result of the Contractor's breach of its Contract obligation to encrypt State data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to the Contract's limitation of liability.

- 3.8.3** Additional security requirements may be established in a Task Order and/or a Work Order.
- 3.8.4** The State shall, at its discretion, have the right to review and assess the Contractor's compliance to the security requirements and standards defined in the Contract.
- 3.8.5** Provisions in **Sections 3.7.1 – 3.7.10** shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Sections 3.7.4-3.7.10** (or the substance thereof) in all subcontracts.

### **3.9 Problem Escalation Procedure**

- 3.9.1** The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.
- 3.9.2** The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.
- 3.9.3** The Contractor shall provide the PEP no later than ten (10) Business Days after notice of recommended award or after the date of the Notice to Proceed, whichever is earlier. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
- a) The process for establishing the existence of a problem;
  - b) Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
  - c) For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
  - d) Expedited escalation procedures and any circumstances that would trigger expediting them;
  - e) The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
  - f) Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
  - g) A process for updating and notifying the Contract Monitor of any changes to the PEP.
- 3.9.4** Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

### **3.10 SOC 2 Type 2 Audit Report**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

### **3.11 Minority Business Enterprise (MBE) Reports**

THIS SECTION IS INAPPLICABLE TO THIS IFB

### **3.12 Veteran Small Business Enterprise (VSBE) Reports**

THIS SECTION IS INAPPLICABLE TO THIS IFB

### **3.13 Work Orders**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

### **3.14 Additional Clauses**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

#### **3.14.1 No-Cost Extensions**

In accordance with BPW Advisory 1995-1 item 7.b, in the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding, one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. Notwithstanding anything to the contrary, no funds may be added to the Contract in connection with any such extension.

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## 4 Procurement Instructions

### 4.1 Pre-Bid Conference

- 4.1.1** A pre-Bid conference (Conference) will be held at the date, time, and location indicated on the Key Information Summary Sheet.
- 4.1.2** Attendance at the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Bids. If the solicitation includes an MBE goal, failure to attend the Conference will be taken into consideration as part of the evaluation of a bidder's good faith efforts if there is a waiver request.
- 4.1.3** It is highly recommended that ALL Prime Contractors bring their intended subcontractors to the Conference/Site Visit to ensure that all parties understand the requirements of the contract and the MBE Goal.
- 4.1.4** Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see **Section 4.2.1 (eMMA)**).

### 4.2 eMaryland Marketplace Advantage (eMMA)

- 4.2.1** eMMA is the electronic commerce system for the State of Maryland. The IFB, Conference summary and attendance sheet, Bidders' questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMMA.
- 4.2.2** In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to [emma.maryland.gov](http://emma.maryland.gov), click on "New Vendor? Register Now" to begin the process, and then follow the prompts.

### 4.3 Questions

- 4.3.1** All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title S00R2600021 - Energy Kit Supplier, and shall be submitted in writing via e-mail to the Procurement Officer no later than the date and time specified the Key Information Summary Sheet. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Bid due date.
- 4.3.2** Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for IFB amendments, and posted on eMMA.
- 4.3.3** The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on the Department unless it issues an amendment in writing.

## 4.4 Procurement Method

A Contract will be awarded in accordance with the Competitive Sealed Bidding method under COMAR 21.05.02.

## 4.5 Bid Due (Closing) Date and Time

- 4.5.1** Bids, in the number and form set forth in **Section 5 (Bid Format)**, must be submitted electronically through eMMA and received by the Procurement Officer no later than the Bid due date and time indicated on the Key Information Summary Sheet in order to be considered.
- 4.5.2** Requests for extension of this date or time shall not be granted.
- 4.5.3** Bidders submitting Bids should allow sufficient delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.02.10, Bids received after the due date and time listed in the Key Information Summary Sheet will not be considered.
- 4.5.4** Bids will be accepted through the State's eMaryland Marketplace Advantage (eMMA) e-Procurement system. Instructions on how to submit bids electronically can be found at: <https://procurement.maryland.gov/wp-content/uploads/sites/12/2019/08/5-eMMA-ORG-Responding-to-Solicitations-Double-Envelope-v2.pdf>
- 4.5.5** Bids may be modified or withdrawn through eMMA before the time and date set forth in the Key Information Summary Sheet for receipt of Bids.
- 4.5.6** Bids may not be submitted by e-mail or facsimile. Bids will be opened publicly at the date and time indicated on the Key Information Summary Sheet.
- 4.5.7** Potential Bidders not responding to this solicitation are requested to submit the "No Bid Notice/Vendor Feedback" form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

## 4.6 Multiple or Alternate Bids

Multiple or alternate Bids will not be accepted.

## 4.7 Receipt, Opening and Recording of Bids

- 4.7.1.1** Upon receipt, each Bid and any timely modification(s) to a Bid shall be stored in a secure place until the time and date set for bid opening. Before Bid opening, the State may not disclose the identity of any Bidder.
- 4.7.1.2** Bids shall be opened publicly, at the time, date and place designated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). The name of each Bidder, the Total Bid Price, and such other information as is deemed appropriate

shall be read aloud or otherwise made available and recorded at the time of bid opening.

## **4.8 Confidentiality of Bids / Public Information Act Notice**

- 4.8.1** The Bidder should give specific attention to the clear identification of those portions of its Bid that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. This information should be identified by page number and placed in the Transmittal Letter with the Bid.
- 4.8.2** The Bids shall be tabulated or a Bid abstract made. The opened Bids shall be available for public inspection at a reasonable time after Bid opening, but in any case before contract award, except to the extent the Bidder designates trade secrets or other proprietary data to be confidential as set forth in this solicitation. Material so designated as confidential shall accompany the Bid and shall be readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Bid, including the Total Bid Price.
- 4.8.3** For requests for information made under the PIA, the Procurement Officer shall examine the Bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by the Office of the Attorney General.

## **4.9 Award Basis**

- 4.9.1** A Contract shall be awarded to the responsible Bidder(s) submitting a responsive Bid with the most favorable bid price or most favorable evaluated bid price (as referenced in COMAR 21.05.02.13) for providing the goods and services as specified in this IFB. Bidders must bid all line items. Partial or incomplete bids will be rejected unless otherwise stated in the solicitation. See IFB Section 6 for Bid evaluation and award information.
- 4.9.2** Award of this contract will not be final and complete until after: (1) the Contractor submits complete and satisfactory documentation required under the Contract and/or documentation required by the Procurement Officer; and (2) the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required.

## **4.10 Tie Bids**

Tie Bids will be decided pursuant to COMAR 21.05.02.14.

## **4.11 Duration of Bids**

Bids submitted in response to this IFB are irrevocable for the latest of the following: one hundred-twenty (120) calendar days following the Bid due date and time or the date any protest concerning this IFB is finally resolved. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

## **4.12 Revisions to the IFB**

- 4.12.1** If the IFB is revised before the due date for Bids, the Department shall post any addenda to the IFB on eMMA and shall endeavor to provide such addenda to all prospective Bidders that were sent this IFB or are otherwise known by the Procurement Officer to have obtained this IFB. It remains the responsibility of all prospective Bidders to check eMMA for any addenda issued prior to the submission of Bids.
- 4.12.2** Bidders shall acknowledge the receipt of all addenda to this IFB issued before the Bid due date.
- 4.12.3** Failure to acknowledge receipt of an addendum does not relieve the Bidder from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Bid to be deemed not responsive.

## **4.13 Cancellations**

- 4.13.1** The State reserves the right to cancel this IFB, accept or reject any and all Bids, in whole or in part, received in response to this IFB and to waive or permit the cure of minor irregularities.
- 4.13.2** In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled and the award processed in accordance with COMAR 21.01.03.01.A(4).
- 4.13.3** If the services that are the subject of the IFB are currently being provided under an interagency agreement with a public institution of higher education and the State determines that the services can be provided more cost effectively by the public institution of higher education, then the IFB may be cancelled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

## **4.14 Incurred Expenses**

The State will not be responsible for any costs incurred by any Bidder in preparing and submitting a Bid or performing any other activities related to submitting a Bid in response to this solicitation.

## **4.15 Protest/Disputes**

Any protest or dispute related to this solicitation or the Contract award shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

## **4.16 Bidder Responsibilities**

- 4.16.1** Bidders must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Bidder shall be responsible for Contract performance including any subcontractor participation.
- 4.16.2** If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the



appropriate Attachment(s) to this IFB (see **Section 4.26 “MBE Participation Goal”** and **Section 4.27 “VSBE Goal”**).

**4.16.3** If the Bidder is the subsidiary of another entity, all information submitted by the Bidder, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Bidder, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Bidder’s Bid shall contain an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.

**4.16.4** A parental guarantee of the performance of the Bidder under this Section will not automatically result in crediting the Bidder with the experience or qualifications of the parent under any evaluation criteria pertaining to the actual Bidder’s experience and qualifications. Instead, the Bidder’s responsibility will be assessed to the extent to which the State determines that the experience and qualifications of the parent are applicable to and shared with the Bidder, any stated intent by the parent to be directly involved in the performance of the Contract, and the value of the parent’s participation as determined by the State.

## **4.17 Acceptance of Terms and Conditions**

By submitting a Bid in response to this IFB, the Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this IFB and the Contract, attached hereto as Attachment M. Any exceptions to this IFB or the Contract must be raised prior to Bid submission. Changes to the solicitation, including the Bid Form or Contract, made by the Bidder may result in Bid rejection.

## **4.18 Bid/Proposal Affidavit**

A Bid submitted by the Bidder must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as **Attachment C** of this IFB.

## **4.19 Contract Affidavit**

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as **Attachment N** of this IFB. This Affidavit must be provided within five (5) Business Days of notification of recommended award. For purposes of completing Section B of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a “foreign” business.

## **4.20 Compliance with Laws/Arrearages**

By submitting a Bid in response to this IFB, the Bidder, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Bidder represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee



benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

#### 4.21 Verification of Registration and Tax Payment

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://www.egov.maryland.gov/businessexpress>.

It is strongly recommended that any potential Bidder complete registration prior to the Bid due date and time. The Bidder's failure to complete registration with SDAT may disqualify an otherwise successful Bidder from final consideration and recommendation for Contract award.

#### 4.22 False Statements

Bidders are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

**4.22.1** In connection with a procurement contract a person may not willfully:

- a) Falsify, conceal, or suppress a material fact by any scheme or device.
- b) Make a false or fraudulent statement or representation of a material fact.
- c) Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

**4.22.2** A person may not aid or conspire with another person to commit an act under **Section 4.22.1**.

**4.22.3** A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

#### 4.23 Payments by Electronic Funds Transfer

By submitting a Bid in response to this solicitation, the Bidder, if selected for award:

**4.23.1** Agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The successful Bidder shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.

**4.23.2** Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at: [http://comptroller.marylandtaxes.com/Vendor\\_Services/Accounting\\_Information/Static\\_Files/GADX10Form20150615.pdf](http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf).

#### 4.24 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Small, Minority & Women

Business Affairs (GOSBA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract, Section 31 “Prompt Pay Requirements” (see **Attachment M**). Additional information is available on GOSBA’s website at:  
<http://www.gomdsmbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

## 4.25 Electronic Procurements Authorized

**4.25.1** Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.

**4.25.2** Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this IFB, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.

**4.25.3** “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://procurement.maryland.gov>), and electronic data interchange.

**4.1.1** In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., Section 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:

The Procurement Officer may conduct the procurement using eMMA or e-mail to issue:

- 1) The IFB;
- 2) Any amendments;
- 3) Pre-Bid conference documents;
- 4) Questions and responses;
- 5) Communications regarding the solicitation or Bid to any Bidder or potential Bidder;
- 6) Notices of award selection or non-selection; and
- 7) The Procurement Officer’s decision on any Bid protest or Contract claim.

The Bidder or potential Bidder may use eMMA to:

- 8) Submit Bids;
- 9) Ask questions regarding the solicitation;

- 10) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or through eMMA, but only on the terms specifically approved and directed by the Procurement Officer and;

- 11) Submit a "No Bid Notice/Vendor Feedback Form" to the IFB.

The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in **Section 4.25.3** of this subsection, utilizing e-mail, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

**4.1.2** The following transactions related to this procurement and any Contract awarded pursuant to it are not authorized to be conducted by electronic means:

- A. Submission of initial Bids, except through eMMA;
- B. Filing of bid protests;
- C. Filing of Contract claims;
- D. Submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications); or
- E. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Bidder be provided in writing or hard copy.

**4.25.4** Any e-mail transmission is only authorized to the e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

## **4.26 MBE Participation Goal**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

## **4.27 VSBE Goal**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

## **4.28 Living Wage Requirements**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

## **4.29 Federal Funding Acknowledgement**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

## **4.30 Conflict of Interest Affidavit and Disclosure**

- 4.1.3** The Bidder shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Bid.
- 4.1.4** By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.
- 4.1.5** Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing

services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

- 4.1.6** Participation in Drafting of Specifications: Disqualifying Event: Bidders are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that “an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.” Any Bidder submitting a Bid in violation of this provision shall be classified as “not responsible.”

#### **4.31 Non-Disclosure Agreement**

**4.1.7** Non-Disclosure Agreement (Bidder)

THIS SECTION IS INAPPLICABLE TO THIS IFB.

**4.1.8** Non-Disclosure Agreement (Contractor)

All Bidders are advised that this solicitation and any Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment I**. This Agreement must be provided within five (5) Business Days of notification of recommended award; however, to expedite processing, it is suggested that this document be completed and submitted with the Bid.

#### **4.32 HIPAA - Business Associate Agreement**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

#### **4.33 Nonvisual Access**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

#### **4.34 Mercury and Products That Contain Mercury**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

#### **4.35 Location of the Performance of Services Disclosure**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

#### **4.36 Department of Human Services (DHS) Hiring Agreement**

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete a DHS Hiring Agreement. A copy of this Agreement is included as **Attachment O**. This Agreement must be provided within five (5) Business Days of notification of recommended award.

**4.36.1 Small Business Reserve (SBR) Procurement** This is a Small Business Reserve Procurement for which award will be limited to certified small business vendors. Only businesses that meet the statutory requirements set forth in State Finance and Procurement Article, §§14-501—14-505, Annotated Code of Maryland, and that are certified by GOSBA Small Business Reserve Program are eligible for award of a contract.

**4.36.2 purposes of a Small Business Reserve Procurement, a small business is a for-profit business, other than a broker, that meets the following criteria:**

- a) It is independently owned and operated;
- b) It is not a subsidiary of another business;
- c) It is not dominant in its field of operation; and
  - 1) With respect to employees, in its most recently completed three (3) fiscal years:
    - a) Its wholesale operations did not employ more than 50 persons;
    - b) Its retail operations did not employ more than 25 persons;
    - c) Its manufacturing operations did not employ more than 100 persons;
    - d) Its service operations did not employ more than 100 persons;
    - e) Its construction operations did not employ more than 50 persons; and
    - f) The architectural and engineering services of the business did not employ more than 100 persons; or
  - 2) With respect to gross sales, in its most recently completed three (3) fiscal years:
    - a) The gross sales of its wholesale operations did not exceed an average of \$4,000,000;
    - b) The gross sales of its retail operations did not exceed an average of \$3,000,000;
    - c) The gross sales of its manufacturing operations did not exceed an average of \$2,000,000;
    - d) The gross sales of its service operations did not exceed an average of \$10,000,000;
    - e) The gross sales of its construction operations did not exceed an average of \$7,000,000; and
    - f) The gross sales of its architectural and engineering operations did not exceed an average of \$4,500,000.
- d) Note: If a business has not existed for three (3) years, the employment and gross sales average or averages shall be the average for each year or part of a year during which the business has been in existence.
- e) Further information on the certification process is available at eMaryland Marketplace Advantage.

**4.36.3 Ineligible Bids.** Under a small business reserve procurement, a business that is not a certified small business is ineligible for award of a contract.

**4.36.4** Before awarding a contract under a procurement designated as a small business reserve procurement, the Procurement Officer shall verify that the apparent awardee is certified by the Governor's Office of Small, Minority & Women Business Affairs as a small business. A procurement contract award under a small business reserve may not be made to a business that has not been SBR certified.

#### **4.37 Bonds**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

#### **4.38 Maryland Healthy Working Families Act Requirements**

On February 11, 2018, the Maryland Healthy Working Families Act went into effect. All offerors should be aware of how this Act could affect your potential contract award with the State of Maryland. See the Department of Labor website for Maryland Healthy Working Families Act Information:

<http://dllr.maryland.gov/paidleave/>.

## 5 Bid Format

### 5.1 One Part Submission

Each Bidder shall submit its Bid with all Required Bid Submissions (see IFB Section 5.4) through eMMA. Submitting the entire Bid as a single PDF file is preferred.

### 5.2 Bid Price Form

The Bid shall contain all price information in the format specified on the Bid Form. The Bidder shall complete the Bid Form only as provided in the Bid Pricing Instructions and the Bid Form. Do not amend, alter, or leave blank any items on the Bid Form or include additional clarifying or contingent language on or attached to the Bid Form. Failure to adhere to any of these instructions may result in the Bid being determined to be non-responsive and rejected by the Department.

### 5.3 Required Bid Submission

A Bidder shall include the following with its Bid:

**5.4.1 Bidder Information Sheet** (see **Appendix 2**)

**5.4.2 Acknowledgement** of all addenda to this IFB.

**5.4.3 Minimum Qualifications Documentation.** The Bidder shall submit any Minimum Qualifications documentation that may be required, as set forth in **Section 1**. If references are required in **Section 1**, those references shall be submitted in this section and shall contain the information described in **Section 1**.

**5.4.4 Completed Required Attachments.** Submit one (1) signed copy of each:

- 1) Completed Bid Form (**Attachment B**).
- 2) Completed Bid Affidavit (**Attachment C**).

**5.4.5 Additional Document \*If Required.** Submit one (1) signed copy of each, if required. \*See appropriate IFB section to determine whether the document is required for this procurement.

- 1) A Signed Statement from the Bidder's Parent Organization Guaranteeing Performance of the Bidder. \*see **Section 4.16**
- 2) Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) \*see **Section 4.26**
- 3) Completed Federal Funds Attachment (**Attachment G**) \*see **Section 4.29**
- 4) Completed Conflict of Interest Affidavit and Disclosure (**Attachment H**) \*see **Section 4.30**
- 5) Completed Mercury Affidavit (**Attachment K**) \*see **Section 4.34**
- 6) Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment E-1**) \*see **Section 4.27**
- 7) Completed Location of the Performance of Services Disclosure (**Attachment L**) \*see **IFB Section 4.35**.

**5.4.6 References.**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

**5.4.7 List of Current or Prior State Contracts.**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

**5.4.8 Financial Capability.** The Bidder must include in its Bid a commonly-accepted method to prove its fiscal integrity. If available, the Bidder shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Bidder may supplement its response to this Section by including one or more of the following with its response:

- 1) Dun & Bradstreet Rating;
- 2) Standard and Poor's Rating;
- 3) Lines of credit;
- 4) Evidence of a successful financial track record; and
- 5) Evidence of adequate working capital.

**5.4.9 Certificate of Insurance.** The Bidder shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Bid submission date. The current insurance types and limits do not have to be the same as described in **Section 3.6**. See **Section 3.6** for the required insurance certificate submission for the apparent awardee.

**5.4.10 Subcontractors.** The Bidder shall provide a complete list of all subcontractors that will work on the Contract if the Bidder receives an award, including those utilized in meeting the MBE and VSBE subcontracting goal(s), if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate attachment(s) of this IFB.

**5.4.11 Legal Action Summary.** This summary shall include:

- 1) A statement as to whether there are any outstanding legal actions or potential claims against the Bidder and a brief description of any action;
- 2) A brief description of any settled or closed legal actions or claims against the Bidder over the past five (5) years;
- 3) A description of any judgments against the Bidder within the past five (5) years, including the court, case name, complaint number, and a brief description of the final ruling or determination; and
- 4) In instances where litigation is ongoing and the Bidder has been directed not to disclose information by the court, provide the name of the judge and location of the court.



## 5.4 Delivery

- 5.5.1 Bids shall only be accepted via the State's internet based electronic procurement system, eMMA. **Bidders may not mail, email or hand-deliver Bids.**
- 5.5.2 Bidders shall provide their Bids in one envelope through eMMA following the [Quick Reference Guides](#) (QRG) labelled "**4 - eMMA QRG Responding to Solicitations (IFB)**" for single envelope submissions.

## 5.5 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a notification of recommendation for contract award, the following documents shall be completed and submitted by the recommended awardee within five (5) business days, unless noted otherwise. Submit one (1) electronic copy of each of the following documents:

- a. Signed contract (**Attachment M**),
- b. Completed Contract Affidavit (**Attachment N**),
- c. Completed MBE **Attachments D-2 and D-3A and B**, within ten (10) Business days, if applicable; see **Section 4.26**,
- d. MBE waiver justification within ten (10) Business days (see MBE Waiver Guidance and forms in **Attachments D-1B and D-1C**), if a waiver has been requested (if applicable; see **Section 4.26**),
- e. Completed VSBE **Attachment E-2**, if applicable see **Section 4.27**,
- f. Signed Non-Disclosure Agreement (**Attachment I**), if applicable; see **Section 4.31**,
- g. Signed HIPAA Business Associate Agreement (**Attachment J**), if applicable; see **Section 4.32**,
- h. Completed DHR Hiring Agreement (**Attachment O**), if applicable; see **Section 4.36**, and
- i. Copy of a current certificate of insurance with the prescribed limits set forth in **Section 3.1 "Insurance Requirements"**, listing the State as an Additional Insured, if applicable; see **Section 3.1**.

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## 6 Bid Evaluation and Award

### 6.1 Bid Evaluation Criteria

The Bids will be evaluated based on the Total Bid Price, as per COMAR 21.02.13. All responsible Bidders will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Bid Price as submitted on the **Attachment B - Bid Form**.

### 6.2 Reciprocal Preference

**6.2.1 Although Maryland law does not authorize procuring agencies to favor resident Bidders in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. COMAR 21.05.01.04 permits procuring agencies to apply a reciprocal preference under the following conditions:**

- a) The Maryland resident business is a responsible Bidder;
- b) The lowest responsive Bid is from a responsible Bidder whose principal office, or principal base of operations is in another state;
- c) The other state gives a preference to its resident businesses through law, policy, or practice; and
- d) The preference does not conflict with a federal law or grant affecting the procurement Contract.

**6.2.2 The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.**

### 6.3 Award Determination

Award will be made to the responsible Bidder who submits to the State the responsive Bid that has the lowest Total Bid Price.

### 6.4 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a Notification of Recommendation for Contract award, the apparent awardee shall complete and furnish the documents and attestations as directed in Table 1 of **Section 7 – IFB Attachments and Appendices**.

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## 7 IFB ATTACHMENTS AND APPENDICES

### Instructions Page

A Bid submitted by the Bidder must be accompanied by the completed forms and/or affidavits identified as “with Bid” in the “When to Submit” column in Table 1 below. All forms and affidavits applicable to this IFB, including any applicable instructions and/or terms, are identified in the “Applies” and “Label” columns in Table 1.

For documents required as part of the Bid:

1. For paper submissions, submit two (2) copies of each with original signatures. All signatures must be clearly visible.

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete certain forms and affidavits after notification of recommended award. The list of forms and affidavits that must be provided is described in Table 1 below in the “When to Submit” column.

For documents required after award, submit three (3) copies of each document within the appropriate number of days after notification of recommended award, as listed in Table 1 below in the “When to Submit” column.

**Table 1: IFB ATTACHMENTS AND APPENDICES**

Applies?	When to Submit	Label	Attachment Name
Yes	Before Bid	A	Pre-Bid Conference Response Form
Yes	With Bid	B	Bid Instructions and Form
Yes	With Bid	C	Bid/Proposal Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf</a> )
No	With Bid	D	MBE Forms D-1A (see link at <a href="https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> ) <b>IMPORTANT:</b> If this IFB contains different Functional Areas or Service Categories. A separate Attachment D-1A is to be submitted for each Functional Area or Service Category where there is a MBE goal.
No	10 Business Days after recommended award		MBE Forms D-1B, D-1C, D-2, D-3A, D-3B (see link at <a href="https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> )

			<b>Important:</b> Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award.
No	As directed in forms	D	MBE Forms D-4A, D-4B, D-5 (see link at xxxxxx)
No	With Bid	E	Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf</a> ) <b>IMPORTANT:</b> If this IFB contains different Functional Areas or Service Categories. A separate Attachment E-1A is to be submitted for each Functional Area or Service Category where there is a VSBE goal.
No	5 Business Days after recommended award	E	VSBE Forms E-1B, E-2, E-3 (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf</a> ) <b>Important:</b> Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award.
No	With Bid	F	Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf</a> )
No	With Bid	G	Federal Funds Attachments (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf</a> )
Yes	With Bid	H	Conflict of Interest Affidavit and Disclosure (see link at <a href="https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf">https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf</a> )
Yes	5 Business Days after recommended award – However, suggested with Bid	I	Non-Disclosure Agreement (Contractor) (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf</a> )
No	5 Business Days after recommended	J	HIPAA Business Associate Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentJ-HIPAABusinessAssociateAgreement.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentJ-HIPAABusinessAssociateAgreement.pdf</a> )

	award – However, suggested with Bid		<a href="#">content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf</a> )
No	With Bid	K	Mercury Affidavit (see link at <a href="#">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf</a> )
No	With Bid	L	Location of the Performance of Services Disclosure (see link at <a href="#">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf</a> )
Yes	5 Business Days after recommended award	M	Sample Contract (included in this IFB)
Yes	5 Business Days after recommended award	N	Contract Affidavit (see link at <a href="#">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf</a> )
Yes	5 Business Days after recommended award	O	DHS Hiring Agreement (see link at <a href="#">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf</a> )
Yes	With Bid	P	Experience Affidavit ( page 68)
<b>Appendices</b>			
<b>Applies?</b>	<b>When to Submit</b>	<b>Label</b>	<b>Attachment Name</b>
Yes	With Bid	2	Bidder Information Sheet (see link at <a href="#">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder OfferorInformationSheet.pdf</a> )
<b>Additional Submissions</b>			
<b>Applies?</b>	<b>When to Submit</b>	<b>Label</b>	<b>Document Name</b>
Yes	5 Business Days after		Evidence of meeting insurance requirements (see <b>Section 3.6</b> ); 1 copy

	recommended award		
No	10 Business Days after recommended award		PEP; 1 copy

**Attachment A. Pre-Bid Conference Response Form**

**Solicitation Number S00R2600021**

Energy Kit Supplier

A Pre-Proposal conference will be held on **December 21, 2021**, at 10:00 A.M., via teleconference.

Please return this form by 4:00 p.m. on December 20, 2021, advising whether or not your firm plans to attend. The completed form should be returned via e-mail to the Procurement Officer at the contact information below:

Joy Niles  
DHCD  
E-mail: [joy.niles@maryland.gov](mailto:joy.niles@maryland.gov)

Vendors wishing to take part in this conference call **MUST** email the Procurement Officer by the Proposal Form Due Date to receive an invitation to the Pre-Proposal conference call.

Please indicate:

\_\_\_\_\_ **Yes, the following representatives will join via telephone.**

Attendees (Include, name and email address).

1.

2.

3.

\_\_\_\_\_ **No, we will not be in attendance.**

Please specify whether any reasonable accommodations are requested (see **IFB Section 4.1“Pre-Bid conference”**):

Offeror:

\_\_\_\_\_  
*Offeror Name (please print or type)*

By:

\_\_\_\_\_  
*Signature/Seal*

Printed Name:

\_\_\_\_\_  
*Printed Name*

Title:

\_\_\_\_\_  
*Title*

Date:

\_\_\_\_\_  
*Date*

**Directions**

Due to the ongoing COVID-19 pandemic, the Pre-Proposal Conference will not be held at DHCD's Lanham headquarters. The Pre-Proposal Conference will be held via Google Meet Virtual Teleconference.

**Attachment B. Bid Instructions & Form**

**B-1 Bid Instructions**

In order to assist each Bidder in the preparation of its Bid and to comply with the requirements of this solicitation, Bid Instructions and a Bid Form have been prepared. Each Bidder shall submit its Bid on the Bid Form in accordance with the instructions on the Bid Form and as specified herein. Do not alter the Bid Form or the Bid may be determined to be not responsive. The Bid Form is to be signed and dated, where requested, by an individual who is authorized to bind the Bidder to the prices entered on the Bid Form.

The Bid Form is used to calculate the Bidder's TOTAL BID PRICE. Follow these instructions carefully when completing your Bid Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this IFB and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, e.g., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this IFB and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Bid Form shall be filled in. Any changes or corrections made to the Bid Form by the Bidder prior to submission shall be initialed and dated.
- F) Except as instructed on the Bid Form, nothing shall be entered on or attached to the Bid Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Bid not responsive.
- G) It is imperative that the prices included on the Bid Form have been entered correctly and calculated accurately by the Bidder and that the respective total prices agree with the entries on the Bid Form. Any incorrect entries or inaccurate calculations by the Bidder will be treated as provided in COMAR 21.05.02.12, and may cause the Bid to be rejected.
- H) If option years are included, Bidders must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the IFB at the prices entered in the Bid Form.
- I) All Bid prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the IFB. The Bid price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the IFB, sample amounts used for calculations on the Bid Form are typically estimates for evaluation purposes only. Unless stated otherwise in the IFB, the Department does not guarantee a minimum or maximum number of units or usage in the performance of the Contract.
- K) Failure to adhere to any of these instructions may result in the Bid being determined not responsive.



**B-1 Bid Form**

The Bid Form shall contain all price information in the format specified on these pages. Complete the Bid Form only as provided in the Bid Instructions. Do not amend, alter or leave blank any items on the Bid Form. If option years are included, Bidders must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Bid being determined not responsive.

**See separate Excel Financial Proposal Form labeled:**

***S00R2600021 - Energy Kit Supplier - Attachment B - Bid Form***

<b>Attachment C.</b>	<b>Bid/Proposal Affidavit</b>
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See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid\\_Proposal-Affidavit.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf).

<b>Attachment D. Minority Business Enterprise (MBE) Forms</b>
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THIS SECTION IS INAPPLICABLE TO THIS IFB.

<b>Attachment E.</b>	<b>Veteran-Owned Small Business Enterprise (VSBE) Forms</b>
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THIS SECTION IS INAPPLICABLE TO THIS IFB.

**Attachment F. Maryland Living Wage Affidavit of Agreement for Service Contracts**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

<b>Attachment G.</b>	<b>Federal Funds Attachments</b>
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This solicitation does not include any Federal Funds.

<b>Attachment H.</b>	<b>Conflict of Interest Affidavit and Disclosure</b>
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See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf>.

**Attachment I. Non-Disclosure Agreement (Contractor)**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf>.



<b>Attachment J.</b>	<b>HIPAA Business Associate Agreement</b>
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This solicitation does not require a HIPAA Business Associate Agreement.

<b>Attachment K.</b>	<b>Mercury Affidavit</b>
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This solicitation does not include the procurement of products known to likely include mercury as a component.

<b>Attachment L.</b>	<b>Location of the Performance of Services Disclosure</b>
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This solicitation does not require a Location of the Performance of Services Disclosure.

**Attachment M. Contract**

Department of Housing and Community Development (DHCD)  
“Energy Kit Supplier”  
S00R2600021

THIS CONTRACT (the “Contract”) is made effective as of the Effective Date, by and between \_\_\_\_\_ (the “Contractor”) [and Parental Guarantor, if applicable] and the STATE OF MARYLAND, acting through the MARYLAND Department of Housing and Community Development (“DHCD” or the “Department”).

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

**1. Definitions**

In this Contract, the following words have the meanings indicated:

- 1.1 “Bid” means the Contractor’s Bid dated \_\_\_\_\_ (Bid date).
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “Contractor” means the entity first named above whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is (Contractor’s FEIN), and whose eMaryland Marketplace Advantage vendor ID number is (eMMA Number).
- 1.4 “Contract Monitor” means the following Department employee identified as the Contract Monitor Officer:  
  
Nicola Tran  
Email: [Nicola.tran@maryland.gov](mailto:Nicola.tran@maryland.gov)  
Office: (301) 429-7794
- 1.5 “IFB” means the Invitation for Bids for Energy Kit Supplier, Solicitation # S00R2600021, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.6 “Effective Date” means \_\_\_\_\_
- 1.7 “Procurement Officer” means the following Department employee identified as the Procurement Officer:

Joy Niles  
Email: [joy.niles@maryland.gov](mailto:joy.niles@maryland.gov)  
Office: (301) 429-7585

- 1.8 “Minority Business Enterprise” (MBE) means any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.9 “State” means the State of Maryland.
- 1.10 “Veteran-owned Small Business Enterprise” (VSBE) means a business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.11 Capitalized terms not defined herein shall be ascribed the meaning given to them in the IFB.

## **2. Scope of Contract**

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-C, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The IFB  
Exhibit B – The Contract Affidavit  
Exhibit C – The Bid

- 2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- 2.3 Without limiting the rights of the Procurement Officer under **Section 2.2** above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

### 3. Period of Performance

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue until \_\_\_\_\_ ("Initial Term").
- 3.2 In its sole discretion, the Department shall have the unilateral right to extend the Contract for <<enter the number of periods >>, successive <<enter the length of the period>> - <<select either year(s), month(s), or day(s)>> renewal options (each a "Renewal Term") at the prices established in the Contract. "Term" means the Initial Term and any Renewal Term(s). **[[Delete this section if there are no Option Years, and change the numbering of the next section to 3.]]**
- 3.3 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

### 4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Bid. Unless properly modified (see above **Section 2**), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.
- [[Use this paragraph for a fixed price contract or a contract that has a fixed price component.]]** The total payment under a fixed price Contract or the fixed price element of a combined fixed price – time and materials Contract shall be the firm fixed price submitted by the Contractor in its Bid.
- [[Use this paragraph for a contract with a time and materials component or has an indefinite quantity (IDIQ) component.]]** For time and materials Contracts, IDIQ Contracts, or Contracts which include either or both a time and materials or IDIQ element(s), total payments to the Contractor pursuant to this Contract for the time and materials and IDIQ portion(s) may not exceed \$\_\_\_\_\_ (the "NTE Amount"), which includes \$\_\_\_\_\_ for the Initial Term**[[If one or more option periods exist, then include:]]** and \$\_\_\_\_\_ for the Renewal Term(s).
- [[Use this paragraph for a contract with a time and materials component, labor hour component, or has an indefinite quantity (IDIQ) component]]** Contractor shall notify the

Contract Monitor, in writing, at least sixty (60) days before payments reach the NTE Amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult and work in good faith with the Department to establish a plan of action to assure that every reasonable effort is undertaken by the Contractor to complete State-defined critical work in progress prior to the date the NTE Amount will be reached; and (b) when applicable secure databases, systems, platforms, and applications on which the Contractor is working in an industry standard manner so as to prevent damage or vulnerabilities to any of the same due to the existence of any such unfinished work.

- 4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor as required by IFB **Section 3.3**.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

## **5. Rights to Records**

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## **6. Exclusive Use**

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this



Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except as provided for in **Section 8 (“Confidential or Proprietary Information and Documentation”)**.

## **7. Patents, Copyrights, and Intellectual Property**

- 7.1 All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.
- 7.2 Except for (1) information created or otherwise owned by the Department or licensed by the Department from third parties, including all information provided by the Department to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the Department will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.
- 7.3 Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable

attorneys' fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.

- 7.4 Without limiting Contractor's obligations under **Section 5.3**, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.
- 7.7 The Contractor shall report to the Department, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 7.8 The Contractor shall not affix (or permit any third party to affix), without the Department's consent, any restrictive markings upon any Deliverables that are owned by the State, and if

such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

**8. Confidential or Proprietary Information and Documentation**

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor provided that each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those of set forth in this Contract.
- 8.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

**9. Loss of Data**

- 9.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and applications with which the Contractor is working hereunder.
- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **IFB Section 3.7**.
- 9.3 Protection of data and personal privacy (as further described and defined in **IFB Section 3.8**) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **IFB Section 3.7**.

**10. Indemnification and Notification of Legal Requests**

- 10.1 At its sole cost and expense, Contractor shall (a) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (b) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 10.2 The State has no obligation: (a) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (b) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 10.3 Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request.

## 11. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## 12. Disputes

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor

must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

### **13. Maryland Law Prevails**

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.
- 13.3 Any and all references to the Maryland Code, annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

### **14. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

### **15. Contingent Fee Prohibition**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor to solicit or secure the Contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

### **16. Non-Availability of Funding**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

#### **17. Termination for Default**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

#### **18. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

#### **19. Delays and Extensions of Time**

- 19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.
- 19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including



but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

## **20. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

## **21. Pre-Existing Regulations**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

## **22. Financial Disclosure**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$200,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

## **23. Political Contribution Disclosure**

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the

contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website:

[http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

## **24. Retention of Records**

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, , whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

## **25. Right to Audit**

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.
- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the Department has the right to audit such subcontractor(s).

## **26. Compliance with Laws**



The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term;
- c. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **27. Cost and Price Certification**

- 27.1 The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Bid.
- 27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Bid, was inaccurate, incomplete, or not current.

## **28. Subcontracting; Assignment**

The Contractor may not subcontract any of its obligations under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

## **29. Limitations of Liability**

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:
  - (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 7 ("Patents, Copyrights, Intellectual Property")** of this Contract;
  - (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and

- (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall not exceed two (2) times the total value of the Contract or \$1,000,000, whichever is greater. **Section 10 ("Indemnification")** of this The above limitation of liability is per incident.
  - (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited.
- 29.2 Contractor's indemnification obligations for Third party claims arising under **Section 10 ("Indemnification")** of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification liability for third party claims arising under **Section 10** of this Contract shall be unlimited if the State is not immune from liability for claims arising under **Section 10**.
- 29.3 In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors are agents of Contractor and Contractor is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

### 30. Commercial Nondiscrimination

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete

list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

- 30.3 The Contractor shall include the language from **Section 30.1**, or similar clause approved in writing by the Department, in all subcontracts.

### **31. Prompt Pay Requirements**

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
  - (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
  - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
  - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between the Contractor and a subcontractor under this **Section 31**, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
  - (b) Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
  - (c) Result in liability against or prejudice the rights of the Department.

- 31.4.1 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the MBE program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
    - i. Inspecting any relevant records of the Contractor;
    - ii. Inspecting the jobsite; and
    - iii. Interviewing subcontractors and workers.Verification shall include a review of:
    - i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
    - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
  - (b) If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
  - (c) If the Department determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
    - i. Terminate the Contract;
    - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
    - iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
  - (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

## 32. Living Wage

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, the Department may withhold payment of any invoice or retainage. The Department may

require certification from the Commissioner on a quarterly basis that such records were properly submitted.

**33. Use of Estimated Quantities**

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

**34. Risk of Loss; Transfer of Title**

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

**35. Effect of Contractor Bankruptcy**

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

**36. Miscellaneous**

- 36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 36.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

- 36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.
- 36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

**37. Contract Monitor and Procurement Officer**

- 37.1 The Contract Monitor is the State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The Department may change the Contract Monitor at any time by written notice to the Contractor.
- 37.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.

**38. Notices**

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State:

Nicola Tran  
Department of Housing and Community Development (DHCD)  
7800 Harkins Road  
Lanham, MD 20787  
Phone Number: 301.429.7794  
E-Mail: [nicola.tran@maryland.gov](mailto:nicola.tran@maryland.gov)

With a copy to:

Joy Niles  
Department of Housing and Community Development (DHCD)  
7800 Harkins Road  
Phone Number: 301.429.7585  
E-Mail: [joy.niles@maryland.gov](mailto:joy.niles@maryland.gov)

If to the Contractor:

(Contractor's Name)  
(Contractor's primary address)  
Attn: \_\_\_\_\_

**43. Hiring Agreement**

- 43.1 The Contractor agrees to execute and comply with the enclosed Maryland Department of Human Services (DHS) Hiring Agreement (Attachment O). The Hiring Agreement is to be executed by the Bidder and delivered to the Procurement Officer within ten (10) Business Days following receipt of notice by the Bidder that it is being recommended for Contract award. The Hiring Agreement will become effective concurrently with the award of the Contract.
- 43.2 The Hiring Agreement provides that the Contractor and DHS will work cooperatively to promote hiring by the Contractor of qualified individuals for job openings resulting from this procurement, in accordance with Md. Code Ann., State Finance and Procurement Article §13-224.

**44. Limited English Proficiency**

The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and MDH Policy 02.06.07.

**45. Maryland's Green Purchasing Reporting Requirements**

The State of Maryland reserves the right to request from the Contractor quarterly sales data over the life of this contract. This information must include details about the recycled content, third-party sustainability certifications, and other environmental attributes of products and services sold on this price agreement per the contract specifications.

This information will enable Maryland State agencies to comply with Article §14-405 of the Annotated Code of Maryland and COMAR 21.13.01.14, effective October 1, 2014, which requires Maryland state agencies to report to the Department of General Services on their procurement of environmentally preferable products and services.

To facilitate consistent reporting on targeted contracts, the Contractor will be provided with a VENDOR GREEN SALES REPORT template by the Maryland Department of General Services.

IN WITNESS THEREOF, the parties have executed this Contract as of the date herein below set forth.

XXX

STATE OF MARYLAND  
DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT

\_\_\_\_\_  
By:

\_\_\_\_\_  
By: Ruth Putnam,  
Director, Division of Finance and  
Admission

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved for form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(BPW Item #)



Attachment N.	Contract Affidavit
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See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf>.

**Attachment O. DHS Hiring Agreement**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf>.

**Attachment P. EXPERIENCE AFFIDAVIT**

**Solicitation Number S00R2600021**

**ENERGY KIT SUPPLIER**

**AUTHORITY** (Select One)

☐ For business entities, including corporations, LLCs, partnerships, trusts, sole proprietorships:

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the  
\_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_  
(name of business entity) and that I possess the legal authority to make this affidavit on behalf of the  
business for which I am acting.

☐ For individuals:

I, \_\_\_\_\_, am over the age of 18 years and competent to attest to the facts and matters  
herein.

**AFFIRMATION OF EXPERIENCE**

I AFFIRM THAT:

1. The Offeror possesses the experience required pursuant to Section 1.1 of the RFP:

A. At least five (5) years of experience within the last 7 years in warehousing, packing and  
shipping goods. (Preferably goods related to energy conservation).

2. Additional information (not required):

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I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE  
CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY  
KNOWLEDGE, INFORMATION, AND BELIEF.

By:

\_\_\_\_\_  
**Print** name of Affiant (Individual Bidder or Authorized Representative, for entities)

\_\_\_\_\_  
DATE:

\_\_\_\_\_  
**Signature** of Affiant (Individual Bidder or Authorized Representative, for entities)

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

## Appendix 1. – Abbreviations and Definitions

For purposes of this IFB, the following abbreviations or terms have the meanings indicated below:

- A. Bid – The Bidder’s Bid.
- B. Bid Price Form or Bid Form - The Attachment B Bid Form.
- C. Business Day(s) – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of “Normal State Business Hours” below).
- D. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
- E. Contract – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of **Attachment M**.
- F. Contract Monitor – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities. The Department may change the Contract Monitor at any time by written notice to the Contractor.
- G. Contractor – The selected Bidder that is awarded a Contract by the State.
- H. Contractor Personnel – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this IFB.
- I. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
- J. Department of Housing and Community Development or (DHCD or the “Department”).
- K. eMMA – eMaryland Marketplace Advantage (see IFB **Section 4.2**).
- L. Invitation for Bids (IFB) – This Invitation for Bids issued by the Department of Housing and Community Development (Department), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
- M. Key Personnel – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See IFB **Section 3.10**.
- N. Local Time – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.

- O. Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- P. Normal State Business Hours - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: State Holidays.
- Q. Notice to Proceed (NTP) – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- R. NTP Date – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.
- S. Bidder – An entity that submits a Bid in response to this IFB.
- T. Personally Identifiable Information (PII) – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- U. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**), and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
- V. Protected Health Information (PHI) – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- W. Security Incident – A violation or imminent threat of violation of computer security policies, Security Measures, acceptable use policies, or standard security practices. “Imminent threat of violation” is a situation in which the organization has a factual basis for believing that a specific incident is about to occur.
- X. Security or Security Measures – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
- Y. Sensitive Data - Means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to “personal information” under Md. Code Ann., Commercial Law § 14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name,

or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.

Z. State – The State of Maryland.

AA. Total Bid Price - The Bidder's bid price or evaluated bid price for goods and services in response to this solicitation, included in **Attachment B** – Bid Form.

BB. Veteran-owned Small Business Enterprise (VSBE) – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

## Appendix 2 – Bidder Information Sheet

See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder\\_OfferorInformationSheet.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf).